

1 suitability. Well, there are two different
2 suitability obligations when you have options as
3 opposed to stock and they're in the rules. NASD Rule
4 2860(b) 16 which was the top -- this is the NASD up
5 here and this is OptionsXpress.

6 Now that rule, the NASD rule talks about
7 approving or disapproving customers before they trade
8 options based on their financial situation,
9 experience, and other things. An option firm before
10 they allow anybody to any kind of options or the
11 protocol buying calls, any type of options trader had
12 a gatekeeper duty to say, hey wait a minute, this
13 type of options trading is the only type we allow
14 for, if any. So that's the suitability obligation
15 before we even get to whether there were any
16 recommendations. There were not recommendations
17 here. We are not here saying anybody from
18 OptionsXpress recommended that Ms. Hale buy options
19 in her IRA. That's not the duty what we're talking
20 about because options are so much more risky than
21 stocks. We're talking about a suitability obligation
22 before anybody -- trade out.

23 In fact, OptionsXpress in their own compliance
24 manual, at least two prior versions to the current
25 one, talks about suitability with respect to options

1 in two different places. One place refers to
2 recommendations, the other place talks about the
3 criteria for opening an account. So they even
4 acknowledge in their own compliance manuals two
5 different suitability obligations when it comes to
6 options. I want to make that clear to the panel. We
7 don't want to get confused.

8 The recommendation suitability obligation is
9 2860(b) 19 as opposed to (b) 16 that has nothing to
10 do with this case because we stipulate on the record
11 OptionsXpress made no specific recommendations from
12 any specific transaction. What OptionsXpress didn't
13 know is they authorized Ms. Hale to buy puts and
14 calls after OptionsXpress reviewed her suitability
15 information, financial background, and experience,
16 and said, okay, you can buy options in your IRA even
17 though it was all the money she had in the world.
18 Here specifically OptionsXpress is broadcasting to
19 the general public promising and advertising on their
20 website that they will do a suitability, their words
21 not mine, analysis, and after such a analysis they
22 will decide whether to allow somebody to do prudent
23 trading of options in their IRA. That is what they
24 broadcast to the general public on their website.
25 Advertising -- website is considered advertising,